

ACCESS 2000

Independent Producers for an Open Information Superhighway

DOCKET FILE COPY ORIGINAL

EX PARTE OR LATE FILED

May 10, 1996

Ex parte (2 copies)
CS Docket No. 96-46

Mr. William A. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

MAY 10 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

On May 8 and May 9, 1996, Harvey Kahn and Alexandra Ackerman met with FCC staff (see attached list) to discuss Access 2000's concerns in the above referenced Rulemaking.

Also attached please find copies of materials given to those in attendance.

Sincerely,


Harvey Kahn

Attachments

Office of the General Counsel

Christopher Wright, Deputy General Counsel

Aliza Katz, Attorney Advisor

Suzanne Tetreault, Assistant General Counsel

Sev MacPaul

Cable Services Bureau

Meredith Jones, Bureau Chief

John Logan, Deputy Chief

Rick Chessen, Assistant Chief

Gary Laden, Chief of Policy and Rules Division

Chairman Reed Hundt

Jackie Chorney, Special Assistant

Commissioner James Quello

Maureen O'Connell, Legal Advisor

Commissioner Rachelle Chong

Susan Toller, Legal Advisor

Commissioner Susan Ness

Mary McManus, Legal Advisor

ACCESS 2000

Independent Producers for an Open Information Superhighway

OPEN VIDEO SYSTEMS (OVS) RULEMAKING

Access 2000

- Access 2000 is a membership organization of independent film, television, video and new media producers who have an interest in maximizing access to new media and technology-based markets for members' products.

Overall Goals

- Create opportunities for members to have an ongoing ownership interest in their programming and meaningful access to delivery systems.
- Ensure that video delivery systems are open to all producers and program providers and lead to new distribution outlets and markets, new sources of capital, and new co-venture partners.
- Support alternative models to broadcast networks and closed-cable systems for delivery of programming to consumers.

Specific Legal/Regulatory Goals

- Encourage FCC to adopt regulatory framework for OVS that provides incentives for telephone companies to opt for OVS as opposed to closed cable model.
- Such incentives include: allowing OVS operators to market channels it did not select, allowing OVS operators to charge different rates for different categories of video programmers, allowing OVS operators to allocate capacity to video programmers based on a prospective payment arrangement, and issuing general regulatory guidelines taking corrective action as needed.

INDEPENDENT PRODUCERS ON THE INFORMATION SUPERHIGHWAY ...

Amid all the excitement about the information superhighway and new media, there's at least one group whose voice hasn't been heard: the *independent film and television producers*. Like most everyone else, we share the enthusiasm, but we're also realists. *We don't want to see the creative community pushed aside in the mad scramble for control of the "pipe" and its programming content.*

We're heartened that the bills now moving through Congress are focusing on competition, open access to the coming "video platforms" and other important safeguards. But we want to strengthen what's good about the pending telecommunications legislation and fight for things that are not yet on the agenda. This legislation is the first focus of ACCESS 2000.

The independent production community needs to protect its interests. That's why some of us have formed ACCESS 2000, an ad-hoc group of independent film and TV producers and new media developers. We want to ensure that the voices of independent producers are listened to in Washington as our government writes the rules that will regulate the very nature of our business for decades to come.

ACCESS 2000 is working to:

- ensure an ongoing ownership stake in our programming (such as licensing structures), meaningful access to delivery systems, and a funding mechanism for new development.
- make sure that the information superhighway is open to all producers and program providers and leads to potential new distribution outlets and markets, new sources of capital, and new co-venture partners.
- increase competition in the telecommunication industry in order to bring in new buyers and new investors. That's why we support Senate bill S. 2111 as an amendment to S. 1822 and House bills H.R. 3626 and H.R. 3636.

*Paul Addis
Michelle Baron
Phil Baron
Martin Behrens
David Brooks
Christopher Dorr
Judith Everett
Steve Faigenbaum
Julian Fowles*

*Max Goldenson
Jonas Goodman
Barry Greenfield
Peter Grunwald
Michael Halperin
Greg Hill
David F. Hines
Barbara Hiser
Harvey Kann
Lois Luger*

*Brenda Miao
D.W. Owen
Leland Price
Laura Richards
Sanford Rosenberg
Angela F. Schapiro
Mark Stambler
Susan Franklin Tanner
Jonathan Wacks*

**For more information or to join ACCESS 2000
call 310-581-0070 or fax your questions to 310-581-1533.**

Media | Geraldine Fabrikant

TELEVISION Entrepreneurs race big cable companies to get new cable services to viewers.

HUNDREDS of new cable services are on the drawing boards, from the privately owned My Pet TV and the Love Channel to Nick at Nite's TV Land and the News Corporation's Fox News Network. The owners of these services have been banking on the arrival of the digital boxes that could let cable operators offer 500 channels.

But the digital boxes have been slow to market. "They are coming out, but we are not looking at tens of millions of them out there," said Larry Gerbrandt, a cable programming analyst at Paul Kagan Associates. "Most people think it will be three to five years before there is real critical mass."

That means new channels only become available when cable systems drop an existing service or improve their technology. "This is not the glory days of the 1980's, where operators were paying you to go on their systems," Mr. Gerbrandt said. "The industry has gone from operators paying the networks to situations where the networks sometimes pay the operators for carriage."

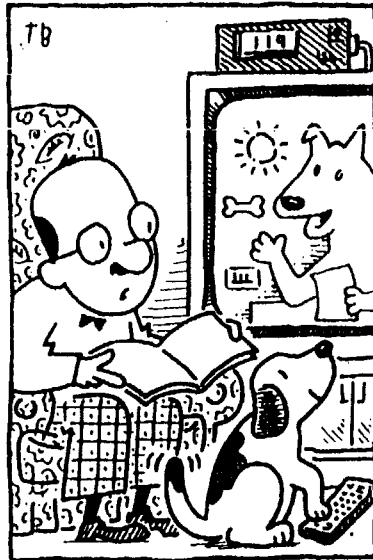
Indeed several cable executives,

who insisted on anonymity, said that the News Corporation was offering cable operators as much as \$10 for each new subscriber to get cable to carry the Fox News Network. "We are having discussions with several operators and we will not comment on the talks at this time," a Fox spokesman, Brian Lewis, said.

Not every company is going to wait for digital boxes to arrive. For example, Discovery Communications Inc., which provides the Discovery Channel and the Learning Channel, plans to introduce its Animal Planet Channel on June 1. The service will carry pet shows, feature films and syndicated shows

Discovery Communications acknowledges that it has no idea how many subscribers Animal Planet will be able to attract.

"We have had this channel on the drawing boards for two and a half years," said Jim Boyle, a spokesman for the company. "In that period, digital boxes have constantly been three years or more away. But we are tired of waiting. At least if we launch, our distributors can see our product, and we believe we will have limited distribution. Hopefully by the



Tom Bloom

fall, we will have a service that has started to prove itself with operators."

John Hendricks, Discovery's chairman, said his company wanted to introduce Animal Planet in June because cable operators generally raise their rates twice a year, and it would be easier for them to do so if they had more services to offer.

Despite the shortage of channels, it is worth a larger company's effort to create a new service, he said. "We are facing continuing fragmenta-

tion," Mr. Hendricks said. "If there is a small cable system, it is a victory to have one of its channels," but if a system has 100 channels, a company that makes cable programming wants to have as many offerings as possible.

Like other programmers, Mr. Hendricks is convinced that he needs as many channels as possible to protect Discovery's leverage with cable operators. "The name of the game is shelf space," he said. "If an operator is going to add channels, we have to be there."

That might explain why Viacom Inc., the parent of MTV, Showtime, and Nickelodeon, is starting Nick at Nite's TV Land, and why Capital Cities/ABC, a unit of the Walt Disney Company, and the Hearst Corporation, which owns Arts and Entertainment, have created the History Channel.

Most of these services are simply spinoffs of existing services. "It is easier for spinoffs because they can control their costs," said Dennis Leibowitz, an analyst at Donaldson, Lufkin & Jenrette.

That is in part because the companies can turn to their existing sales and marketing staffs to begin selling the new services.

"On a stand-alone basis, it will be very tough for individual services to get started," Mr. Leibowitz said.

That has not dissuaded dozens of entrepreneurs from trying their luck. My Pet TV, which is owned by the Los Angeles-based Nightwing Entertainment Company and has an alliance with the Humane Society, hopes to make its debut in September.

Mr. Marcovsky said he hoped to raise \$10 million for the service and was talking not just to cable operators but also to direct-to-home programmers. Because such companies, like DirecTV, offer only national services, they might have capacity available for new entries. And as Mr. Marcovsky put it, "Dogs and cats travel." He is hoping they travel abroad as well.

The Love Channel is dedicated to "educational programming and self-esteem and self-improvement done in an entertaining format," its president, Josephina Gamundi, said. She is hoping to raise \$3 million for the project.

Some experts doubt that such services have much chance in a media world that is constantly consolidating.

"Some of the weaker services will combine," Mr. Hendricks said. "A Time Warner or a Turner Broadcasting can support five or six services. In the end, just as you have four or five major broadcast programmers, you will have that number of major cable programmers."

Making Films Before Fame Knocks

By JENNIFER DUNNING

They mortgage their houses to finance their films. Checks bounce. Credit cards quickly reach their limits. Martin Scorsese recalls once having to deny a film crew member an extra helping of spinach because it cost 35 cents. Whit Stillman went without sleep for two weeks while shooting "Metropolitan."

"You always feel like it's a disaster," R. J. Cutler, producer of "The War Room," says.

Welcome to the world of independent film makers, whose work is the focus of the Independent Film Channel, a new, 24-hour cable service that will get under way tonight in Boston at 7 o'clock. Dedicated entirely to independent films and programs about their creation, IFC will be distributed by the Bravo Cable Network, a subsidiary of Cablevision Systems Corporation, the nation's fourth-largest cable operator and, with ITT, the new owner of Madison Square Garden.

In a twist of fate — and commerce — typical of the dizzying ups and downs of independent film making, the channel will at first be unavailable on cable except in Boston. It will be available to about 750,000 homes around the nation with satellite dishes. By the end of this year, according to IFC, it will be available to about two million homes nationwide via cable, including Cablevision systems on

Long Island and in New Jersey, Brooklyn, Queens, Yonkers and parts of Westchester. But not in movie-mad Manhattan, since Time Warner Cable did not pick up the channel for its Manhattan system. "We don't have any channel capacity left," said Barry Rosenblum, president of Time Warner Cable of New York City.

A Growth In Interest

Kathleen Dore, senior vice president and general manager of Bravo and IFC, said last week that the channel had "been in the planning stages for a couple of years."

"Bravo has for a time had a regular weekly series featuring independent films," Ms. Dore said. "We've noticed interest is growing dramatically. There has been an increase in box office and attention by the press since films like 'The Player,' 'The Piano' and 'The Crying Game.' We also looked at the fact that that whole genre is very underserved on television."

Mr. Scorsese signed on this year as head of the channel's advisory board, which also includes Robert Altman, Ethan and Joel Coen, Martha Coolidge, Jim Jarmusch and Spike Lee. "The field is full of mentors," Ms. Dore said. "People with little time, who are still working very hard at their careers. They are bombarded on all sides. But they still do find time."

One of the first films to be shown will be "Everybody Just Stay Calm:

Stories in Independent Film Making," a half-hour film commissioned by the channel for its opening night. Directed by Ileana Douglas, an actress and new film maker, it features brief, wry interviews with 23 independent film makers, actors, producers and distributors. Mr. Scorsese talks about spinach and other traumas, Mr. Cutler about the independent film maker's constant sense of impending doom, and Mr. Stillman about sleep deprivation and avoiding fireworks tossed at the cameraman by exuberant Spaniards during the

A new cable channel is devoted to independent cinema.

shooting of his latest film, "Barcelona."

Much of the programming will be devoted to the work of established independents. Tonight's lineup includes films by Mr. Jarmusch, Volker Schlöndorff and Jonathan Demme. September programming will also feature a festival of five films by John Cassavetes, considered by many the father of independent film-making,

including "Shadows," which has just been released on video by Buena Vista Pictures, a Disney subsidiary.

Forthcoming festivals will be devoted to the films of Kurosawa and Truffaut. Other series will include "Cult Classics" and "People We Like."

"Some stars feel they did their best work in little-known films," Ms. Dore said. "'People We Like' will show some of them in roles people don't know they played."

This month the series will include Natasha Richardson as Mary Shelley in Ken Russell's "Gothic," shown unedited, and Brad Pitt as a Ricky Nelson-style rock star in "Johnny Suede," a comedy directed by Tom de Cillo, the cinematographer on several early Jim Jarmusch films. In "Director's Choice," directors will choose favorite films and introduce them.

IFC also plans to provide on-the-spot coverage of major film festivals. It is through festivals and a network of distributors developed by Bravo that the channel finds films by emerging or new film makers, Ms. Dore said. Over the next year, the channel will provide financing for 8 to 12 short films by emerging film makers, starting with Ms. Douglas's "Boy Crazy, Girl Crazy."

Interest in student film making has grown with the popularity of independent films, and the channel will sponsor a university showcase at the annual Independent Film Market in mid-September at the Angelika Film



Martin Scorsese, seated beside an editing console, heads the advisory board of a new cable channel that will present independent films.

Center. Work from eight film schools will be chosen for screening at the market: Boston University; Columbia University; New York University; San Francisco State University; the School of Visual Arts; the University of California at Los Angeles; the University of Southern California and the University of Texas at Austin. One of the eight films will receive the Bravo/IFC Outstanding Student Film of 1994 Award, which includes a cash

prize of \$10,000 and the opportunity to make a short film for Bravo/IFC.

Reeves Lehmann, chairman of the film and video department at the School of Visual Arts in Manhattan, said that attendance had soared over the last five years for the school's annual Dusty Awards ceremony, at which the work of senior-year film makers is shown. "And in addition

Continued on Page C17

Independent Films on Cable

Continued From Page C13

to the nation's five major film schools, he said, there are now some eight to nine hundred film programs around the country.

Another change, Mr. Lehman said, is the increasing sophistication of independent films, even on the student level. The financial risks are still great for independent film makers, many of whom are blinded by success stories starting with the Coen brothers' "Blood Simple." "There are hundreds of unfinished independent films," Mr. Lehman said. "The idea is that making films is not so difficult. Well, it is. But the technique, the film stock, the production values of inde-

pendent films have gotten so much better that they are now a viable source for the Hollywood studios. The only risk they're taking is putting some monies into getting the film on the screen."

Ileana Douglas agrees about the difficulties of film making. She made her first film with savings from her salary as an actress in "Alive," the 1993 Paramount-Walt Disney Pictures film about a plane crash in the Andes. The cast and crew spent four months living on a glacier. Ms. Douglas said, watching "Hearts of Darkness," Eleanor Coppola's independent film about the disaster-fraught making of "Apocalypse Now." The film, Ms. Douglas said, was "our bible."

Copyright 1994 Diversified Publishing Group
Multichannel News

October 3, 1994

"Frankly, my dear, I don't give a damn" and "Tomorrow is another day" aren't just two of the most famous lines from one of Hollywood's most famous movies. They've also been the refrain of many of the Hollywood studios about the notion of getting involved in one of the hottest areas in international TV: launching new networks.

Sure, 20th Century Fox and Time Warner Inc. have been active network builders abroad, but for the most part the studios controlling the lion's share of programming have mostly held back from such global pay TV ventures.

They've left the field to folks such as Viacom Inc., Tele-Communications Inc. and Turner Broadcasting System Inc., which were keyed into global expansion of their domestic channel operations.

While in the past the studios had been content to focus on syndication and production, for the last year or so Hollywood has been casting a new role for itself. Players such as Columbia TriStar, The Walt Disney Co., Paramount Pictures, Universal Pictures and MGM are becoming more aggressive about starting new networks around the world.

"That's a pretty accurate observation. There's certainly a lot more activity in that arena," says Michael Grindon, executive vice president of Columbia TriStar International Television in Culver City, Calif.

Grindon notes that the studios have watched from the sidelines as Time Warner's Home Box Office unit and Canal Plus started highly profitable pay TV services in their home countries and then used them to spawn several new networks in other regions of the world.

The studios have provided the fuel to drive those networks, reaping a small syndication fortune while the new networks established themselves. Now that the channels they've helped build are highly profitable, the studios feel more confident about going after a bigger piece of that action.

"It's impossible not to be very much aware of the success of HBO and Canal

Plus and other pay TV networks," says Grindon. "So everyone is saying, 'Gee, wouldn't it have been nice, in addition to supplying product, to see if we could have some equity participation and build a growth opportunity?'"

"They realize that they need to have all the revenue streams they can have with respect to their product and not just be in the business of licensing it," says Rafael Pastor, New York-based executive vice president and managing director of USA Networks International, which is owned by Paramount and Universal parent MCA Inc.

The studios also feel they're the best suited to see how valuable brands such as Disney get exploited around the world.

"They would like to be more involved with programming, marketing, development," says Grindon, "and they'd like a seat at the table in terms of how those issues are managed and directed."

"If you can create a joint venture with an entity that can deliver the technical services and the reach and the access, and you supply the programs from a library that you have sitting around anyway, that is something one should look at," says Haim Saban, chairman/CEO of Hollywood independent Saban Entertainment in Burbank, Calif.

"You are seeing alliances between the people who control the access and the people who control the software," he says. "These are natural alliances."

Among the majors, Columbia TriStar is about to expand the pay TV interests in Latin America it acquired through parent Sony Pictures Entertainment in a deal with HBO Ole earlier this year. The studio will play a key role in launching some new basic channels with Home Box Office.

In addition to those co-venture channels, "we've been looking at several other channels that we would like to launch there. Those plans are moving forward," says Grindon. "We have certainly had discussions with HBO about doing things elsewhere in the world, and those are continuing."

A year ago, Columbia TriStar's overseas channel portfolio was empty, but today it has a half dozen properties. Grindon pledges: "We're very much in the network business and very committed to making those networks a success."

The studio's Latin American channels will join Columbia's portfolio of HBO Ole, HBO Brasil and Cinemax Latin America in the region. The studio's parent company, Sony Pictures, has the new Viva music network in Germany, which is due to expand elsewhere soon, and Sony has also been considering launching a channel in France.

Even Disney, one of the least animated studios on the channel front despite the U.S. success of The Disney Channel, is making its interest in pay TV known in Europe.

The studio recently announced a partnership with CLT Multi Media, one of the most powerful network players in Europe, to start the cable and satellite network Super RTL in Germany and to explore other network ventures in Europe.

Cable industry sources say Disney officials are getting ready to make a major

Multichannel News, October 3, 1994

U.K. move beyond their stake in the Independent Television franchise GMTV in Britain. Negotiations were continuing at press time between Disney, British Sky Broadcasting and cable players over possible channel launches and other new services.

Disney is said to be analyzing its total U.K. TV plan, from terrestrial to cable and satellite to its role in pay-per-view, which is due to hit Britain next year.

"I know that there has been a tremendous amount of activity, and they are keeping it very close to their chest," says one top U.K. programming official.

"I know for a fact that they have had extensive meetings over recent weeks," the source says, "so much so that the people that we deal with have been inaccessible. It takes them a long time to move, but once they move, they move in a big way usually."

Etienne de Villiers, president of Buena Vista International Television in London, acknowledges that the U.K. is a top priority for Disney. But he adds, "There are other countries that we are busy looking at."

Indeed, Disney is exploring the launch of a family channel in The Netherlands with CLT.

Richard Frank, chairman of the television and telecommunications unit of The Walt Disney Co. in Burbank, Calif., says that the studio's deal to get a Disney film block placed each Saturday on Doordarshan, the state-run broadcaster in India, is a first step toward a full-fledged network launching there. Disney already has a deal with The Modi Group to eventually start a Disney channel in that country.

"If our stuff is well accepted, perhaps we'll expand in the future," Frank says of the activity in India. "Right now, there's not the possibility in India because there are not many channels, but who knows what is going to happen? All of these countries are really just evolving."

Buena Vista's de Villiers adds, "We're looking at what's going on in Latin America. There's a lot of talk right now about doing satellite services for the Spanish-speaking continent ... but I think the major markets in Europe are the primary focus right now."

Disney was talking to the German network Vox before Rupert Murdoch stepped in and acquired 49.9 percent of that property. Earlier, Disney struck a deal with Star TV, but nothing ever materialized.

A little more than a year ago, Rupert Murdoch's News Corp.'s acquisition of a majority share in Star TV marked the most significant move into Asia by a company owning a major studio -- and one that Fox will certainly benefit from.

Even the Hollywood independents are warming up to the notion of starting networks.

Saban, the independent producer, says to "watch for some announcements soon" about a "worldwide" network venture for his company, but he won't elaborate.

Multichannel News, October 3, 1994

"I will be involved in channels in Latin America, Europe, the Middle East and Asia," adds Michael Solomon, who left his job as president of Warner Bros. International Television Distribution last March. He then formed the international telecommunications company Solomon International Enterprises in Beverly Hills, Calif.

He feels the studios are too bogged down to grow in the channel area now even if they want to. And that's one reason he's attracted to the network business.

"Studio executives are too insecure about their own jobs and studios are not structured in such a way that permits decisions to be made as fast as they should be," says Solomon. "Most top studio executives today are burdened with too many responsibilities, and they have to make too many decisions in so many different areas."

Solomon says Disney has lost serious ground by waiting so long to expand globally on the channel front and by not being more flexible with partners sooner.

"They've lost many, many opportunities because of their arrogance and their stubbornness," he says. "They have to have everything their way. They've known what was out there for many years but in my opinion they have just gone about it really wrong. They've lost many opportunities in many countries in Europe and Asia and Latin America."

Disney officials argued their hesitation was due to a concern over protecting its entertainment franchise, a concern for all Hollywood players, which have the best-known brands in the business.

"That's always made it difficult for us to embrace partnerships, because partnerships by definition involve compromise," says Buena Vista's de Villiers.

A top Columbia TriStar official acknowledged that the Hollywood studios are learning that they can't expect complete control in international ventures.

"I think everyone's becoming much more attuned to the fact that you have to be able to deal with flexibility and work on a specific, territory-by-territory basis, perhaps with different partners," says Grindon, "to make sure you're developing ventures that suit local tastes and maximize the talents and advantages that all of the partners bring to the table."

The studios are also learning that companies already active, such as Turner, TCI and Discovery Communications Inc., are better poised to seize opportunities.

Such network-oriented companies "have an organization up and running looking for new development opportunities," says Columbia TriStar's Grindon. "Some studios may not have the fully developed network personnel capabilities, so they don't necessarily jump as quickly at an opportunity."

"One can't announce tomorrow a new network until you put the people in place to do it," he says, "so for established networks already there, it's perhaps easier to jump in and say this is what we're going to do."

Some argue that even if the studios try to become more flexible and staff up in new ways, Hollywood will continue to be hampered by bureaucracy.

"By the time the international studio executives get in to see the executive that's in charge of worldwide decisions, whoever that may be, then they have to educate that executive who really isn't out in the field and really doesn't know what's happening," says Solomon. "He has to be convinced that the recommendation of the guy in the field is the right decision. And sometimes that takes a long time."

His former studio, Warner Bros., has already been very active in pay TV through HBO, but Solomon says, "Even Warner Bros. itself should have made decisions a couple of years before it actually did."

Warner Bros. has taken the unusual move of integrating its syndication and pay TV explorations within its distribution division by adding a top-level executive to focus on channels, in addition to the completely separate activity handled through HBO. Sue Kroll, who was hired away from TNT & Cartoon Europe to fill the job, declined to discuss her strategy, saying it's too early in her tenure.

So far, all of Time Warner's pay and free TV network activity has come under the aegis of HBO, and from its division, Time Warner International Broadcasting.

Even Paramount Pictures, which has confounded observers by not being active under its own banner with networks internationally, is expected to become more visible in pay TV abroad because of its acquisition by Viacom Inc.

"For them Viacom this is a core business. They've built their business on Nickelodeon, MTV, Showtime and VH-1, and they're big believers in running business such as this domestically and internationally," says USA's Pastor. "So that's good news for us."

Paramount, along with Universal parent MCA Inc., has made new moves through USA Networks, which the two companies co-own. USA has launched a Latin American version of USA Network, and a European version of Sci-Fi Channel is due next year.

"Paramount supported our expansion internationally with USA Latin America last year, which they approved before the merger," Pastor points out.

Paramount also bought a stake in HBO Asia, marking one of the few other major studio moves on the network front in that region.

Paramount, Universal Pictures and MGM have also been gearing up a bit through United International Pictures, their joint company in London that handles distribution outside of the United States and Canada. UIP and Fox recently took an ownership position in Cine Canal, a Latin American service based in Mexico, and UIP owns a stake in Star Channel in Japan.

However, many observers are still astonished Paramount hasn't been more aggressive with global networks. A conflict over syndication rights for Paramount programming was cited as the reason that the proposed network Hollywood USA, a European version of USA Network, never got off the ground last

year.

The syndication heads at USA parent studios Paramount and Universal are seen as two of the most resistant to giving up syndication sales in order to jump start network ventures with programming. Both declined to be interviewed for this story.

"I think there is an inherent structural tension inside these studios between those who are charged with licensing and syndicating the product and those looking to maximize their short-term cash, which is their job," says USA's Pastor of Hollywood companies in general.

Solomon has a more barbed way of putting it, but a way that captures a widely held belief that some top international syndication executives fear that new channel launches will cut into their division's sales -- and their own personal commissions.

"There's resistance for personal gain," says Solomon. "For personal reasons, there are a lot of people who don't have the best interests of the company at heart. They have their own interests at heart."

But figuring out when to pull back on highly lucrative syndication sales in return for the investment in a new network that might not be profitable for years is clearly a tough decision.

For the cable networks the new networks essentially represent breaking new ground because they haven't been major international distributors anyway.

"At the end of the day it's show business and it's not show art," says Disney's Frank, "and we have to turn a profit to our shareholders."

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of Section 302 of)	CS Docket No. 96-46
the Telecommunications Act of 1996)	
)	
Open Video Systems)	

COMMENTS OF ACCESS 2000

Samuel A. Simon, Esq.
901 15th Street, NW
Suite 230
Washington, D.C. 20005
(202) 408-1400

Harvey Kahn
2656 29th Street
Santa Monica, CA 90405
(310) 581-0070

April 1, 1996

COMMENTS OF ACCESS 2000

Access 2000¹ submits the following comments in response to the Notice of Proposed Rulemaking (hereafter Notice) in the above titled proceeding.

Access 2000 believes that the open video system (OVS) concept developed by Congress holds the potential to increase diversity and choice in programming and provide new business opportunities for independent producers. We have been involved in a variety of video dialtone proceedings before the Federal Communications Commission (FCC) and we participated in the legislative process leading to passage of the Telecommunications Act of 1996 to promote not only our unique business interests but the complimentary goals of programming diversity and consumer choice. We are participating in this proceeding as a natural outgrowth of our previous activities, and because we believe the decisions made by the Commission in this rulemaking are critical to achieving OVS's potential.

Introduction

Access 2000 urges the FCC to implement Section 302 of the Telecommunications Act of 1996 with minimum regulatory requirements

¹ Access 2000 is a membership organization of independent film, television, video and new media producers whose mission is to maximize access to new media and technology-based markets for its members' products. Access 2000 aims to promote its membership's interests by articulating members' needs and concerns to regulatory bodies, distributors, investors and the public.

and maximum flexibility to encourage telephone companies to opt for the open video system model for their video programming services.

Access 2000 participated in proceedings before the FCC on the Commission's video dialtone rules (VDT). Throughout those proceedings, Access 2000 indicated its strong preference for VDT over the closed cable model. We argued that the VDT model could create new business opportunities for independent producers as program providers looked for new programming. Independent producers could also have become, although we thought this less likely, programmers, offering their products directly to consumers over a VDT network.

For a variety of reasons, VDT did not work. With the new OVS model created by the 1996 Act, the Commission now has an opportunity to realize many of the benefits of VDT, if it creates a regulatory environment that allows the maximum flexibility in developing the business case for OVS.

Telephone companies will only opt for the OVS model if they believe that they can compete with the incumbent cable operator. We are concerned that local telephone companies appear to be choosing a closed cable model for their video programming business. Using the closed cable model, telephone companies can compete with local cable operators and consumers will enjoy a wider variety of programming choices and lower prices. The OVS model offers far more alternatives for consumers and not only price competition but new pricing models running the gamut from competing packages of programming to full a-la-carte programming menus.

Toward this goal of encouraging telephone companies to opt for the OVS model, Access 2000 makes the following initial comments on several items in the Notice.

I. OVS Operator Should Be Allowed to Market Channels It Did Not Select

We support the Commission's tentative conclusion that an OVS "operator or its affiliate should be permitted to market to subscribers the programming services selected by other, unaffiliated video programming providers."² We believe that the Commission should clarify that the OVS operator or its affiliate is under no obligation to market to subscribers all of the programming services offered by other, unaffiliated video programming providers. Further, we believe that the OVS operators should have the ability to market programming services selected by others even if the OVS operator or its affiliate or another subsidiary of its parent corporation has a financial interest in the programming.

II. OVS Operators Should Be Allowed to Charge Different Carriage Rates for Different Categories of Video Programmers

Subsection 653(b)(1)(A) of the Telecommunications Act of 1996 requires that "rates, terms, and conditions" for carriage be "just and reasonable and ... not unjustly or unreasonably discriminatory." The Commission asks whether or not it is permissible for OVS operators to "charge different rates to different categories of video programming -- e.g., not-for-profit

² Notice at par. 27.

programmers, home shopping programmers, or pay-per-channel or pay-per-program programmers."³ Allowing OVS operators to charge different rates for different categories of programming is permissible and in the public interest. We believe that within each of these categories the Commission should require that rates for carriage be "just and reasonable and ... not unjustly or unreasonably discriminatory," but that between categories, the OVS operator should have a fair degree of latitude.

III. OVS Operators Should Be Allowed to Allocate Capacity to Programmers on a Prospective Payment Arrangement

Access 2000 is concerned that, as regards rates, terms and conditions, the Commission is looking at the OVS model through VDT glasses. Under the VDT model, video programmers lease or rent capacity on the network. This is not surprising given that VDT is a common carriage model and that the Commission first adopted the model at a time when local telephone companies could not own programming. VDT was designed to encourage telephone companies to build video delivery networks and sell or lease space on the network to others who would provide video programming.⁴ Local telephone companies were to be landlords and each apartment, i.e., channel, would cost the same.

³ Notice at par 32.

⁴ The Commission's VDT rules did allow local telephone companies to have an ownership interest of up to five percent of the programming distributed over the network. The Commission felt that this was needed to provide an extra added incentive for local telephone companies to build video dialtone networks.

OVS is a hybrid model lying somewhere between the closed cable model and a common carriage model like VDT. As such it should draw from the best of both. Therefore, OVS operators should be allowed to develop prospective payment models and apply those models to categories of video programmers. Payment could be based upon the number of subscribers or set as a fixed percentage of a video programmers revenues. OVS operators and their affiliates should be allowed to develop other business and financial models to develop or license programming that would be distributed over the OVS network. Such arrangements could include underwriting production costs and eliminating the need for an up-front payment or entry fee into the OVS network.

IV. The Commission Should Issue General Guidelines and Allow the OVS Market to Develop Taking Corrective Action as Needed

At several points in the Notice the Commission asks, in essence, if it would be best to adopt a minimum of regulatory requirements, closely monitor development in the OVS market, and take corrective action if necessary. For example, in regards the allocation of capacity among video programmers, the Commission notes:

One approach would be to adopt a regulation that simply prohibits an open video system operator from discriminating against unaffiliated programmers in its allocation of capacity, we would allow the open video system operator latitude to design a channel allocation policy consistent with this general rule. The Commission would rule on complaints alleging discrimination on a case-by-case basis, and, if a violation were found, could require carriage and/or award damages to any such person denied carriage, or provide any other remedy available under the Communications Act. Such an approach would

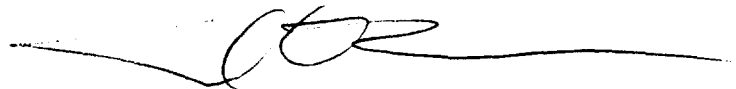
provide operators with maximum business flexibility. In addition, this approach may be the most effective in encouraging telephone companies to begin providing service over open video systems.⁵(emphasis added)

Access 2000 concurs with the view that the Commission should allow maximum business flexibility while reserving its ability to review developments and rule on complaints filed by interested parties as regards the allocation of channel capacity and other issues outlined in the Notice.

CONCLUSION

Access 2000 urges the Commission to establish incentives telephone companies to build and operate OVS networks. The OVS model is superior to the closed cable model. The Commission should provide for maximum business flexibility, minimum regulation, and appropriate oversight and review.

Respectfully submitted,



Samuel A. Simon, Esq.
901 15th Street, NW, Suite 230
Washington, D.C. 20005



Harvey Kahn
2656 29th Street
Santa Monica, CA 90405
(310) 581-0070

April 1, 1996

⁵ Notice at par. 12.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of Section 302 of)	CS Docket No. 96-46
the Telecommunications Act of 1996)	
)	
Open Video Systems)	

REPLY COMMENTS OF ACCESS 2000

Samuel A. Simon, Esq.
901 15th Street, NW
Suite 230
Washington, D.C. 20005
(202) 408-1400

Harvey Kahn
2656 29th Street
Santa Monica, CA 90405
(310) 581-0070

April 11, 1996

COMMENTS OF ACCESS 2000

Access 2000¹ submits the following Reply Comments in response to the Notice of Proposed Rulemaking (hereafter Notice) in the above titled proceeding.

I. OVS COULD END UP ON THE REGULATORY JUNK PILE WITH VDT

In our Comments, Access 2000 urged the FCC to implement Section 302 of the Telecommunications Act of 1996 (the Act) with minimum regulatory requirements and maximum flexibility to encourage telephone companies to choose the open video system model for their video programming services.

OVS was designed by Congress to be an alternative to both the common carrier model and the closed cable model. Congress did not, however, intend that OVS regulation would be an amalgam of common carrier and cable regulation. In fact, just the opposite is true.

"New section 653(c) sets forth the reduced regulatory burdens imposed on open video systems. There are several reasons for streamlining the regulatory obligations of such systems. First, the conferees hope that this approach will encourage common carriers to deploy open video systems and introduce vigorous competition in entertainment and information markets. Second, the conferees recognize that common carriers that deploy open systems will be "new" entrants in established markets and deserve lighter regulatory burdens to level the playing

¹ Access 2000 is a membership organization of independent film, television, video and new media producers whose mission is to maximize access to new media and technology-based markets for its members' products. Access 2000 aims to promote its membership's interests by articulating members' needs and concerns to regulatory bodies, distributors, investors and the public.

field. Third, the development of competition and the operation of market forces mean that government oversight and regulation can and should be reduced.² (emphasis added)

Notwithstanding this general admonition, the Act does establish a regulatory framework for OVS. The Comments filed in this proceeding push and pull the Commission in different directions on each of the issues discussed in the Notice of Proposed Rulemaking. Access 2000 urges the Commission to measure its decisions against Congress's admonition to streamline regulatory obligations for OVS providers. If not, OVS could end up on the regulatory junk pile with video dialtone.³

II. OVS PROVIDERS SHOULD HAVE SIGNIFICANT FLEXIBILITY IN SETTING RATES FOR DIFFERENT CATEGORIES OF VIDEO PROGRAMMERS

In our Comments, Access 2000 argued that allowing OVS operators to charge different rates for different categories of programming is permissible and in the public interest. We believe that within each of these categories the Commission should require that rates for carriage be "just and reasonable and ... not unjustly or unreasonably discriminatory," but that between categories, the OVS operator should have a fair degree of latitude.

² Telecommunications Act of 1996, Conference Report, at 62.

³ In fact, in many areas OVS may already be a non-option. Ameritech has just been awarded its fourteenth franchise to provide cable television service in its region demonstrating that the closed cable model is an attractive option for local exchange carriers.

Comments filed by MFS are consistent with our position.⁴ Comments filed by others,⁵ however, ask the Commission to impose common carrier-like regulations on OVS rates and should be rejected. The Motion Picture Association of America (MPAA) urges the Commission to adopt rules, "that would prohibit any kind of discrimination based on content or that otherwise is not economically justified."⁶ It is unclear what MPAA means by "economically justified." However, MPAA opposes the Commission's proposal to adopt a presumption that rates are reasonable if some number of non-telco programmers gain access to the OVS network or if rates for non-telco programmers are the same as for the telco-affiliated programmer. Further, MPAA urges the Commission to adopt a cost based formula for rates and strict cost allocation requirements. We can only presume then that the phrase "economically justified" refers solely to OVS network based costs.

Access 2000 believes that in order to ensure that OVS subscribers have access to the widest variety of programming from the widest variety of sources, OVS operators should have significant flexibility in establishing rates for different categories of programmers. One way to achieve this goal is to allow OVS operators to develop prospective payment models.

⁴ See Comments of MFS at 8-14.

⁵ See, for example, Comments of the National Cable Television Association and the National League of Cities.

⁶ Comments of MPAA at 9.

III. OVS OPERATORS SHOULD BE ALLOWED TO DEVELOP PROSPECTIVE PAYMENT MODELS

Notwithstanding the fact the OVS was adopted by Congress as an alternative to the common carrier and closed cable models, very few of the Comments received by the Commission demonstrate thinking beyond these two approaches. For example, in our Comments Access 2000 argued that OVS operators should be allowed to develop prospective payment models and apply those models to categories of video programmers. Payment could be based upon the number of subscribers, or set as a fixed percentage of a video programmer's revenues. OVS operators and their affiliates should also be allowed to develop other business and financial models to develop or license programming that would be distributed over the OVS network. Such arrangements could include underwriting production costs and eliminating the need for an up-front payment or entry fee into the OVS network.

CONCLUSION

Congress adopted an OVS model to provide a significant degree of regulatory flexibility for telephone companies entering the video programming market. The Commission can best achieve this goal by providing for maximum business flexibility, minimum regulation, and appropriate oversight and review.

Respectfully submitted,

Harvey Kahn
2656 29th Street
Santa Monica, CA 90405
(310) 581-0070

Samuel A. Simon, Esq.
901 15th Street, NW, Suite 230
Washington, D.C. 20005
Counsel to ACCESS 2000

April 11, 1996